STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814

October 18, 1989

ALL COUNTY INFORMATION NOTICE NO. I-71-89

TO: ALL COUNTY WELFARE DIRECTORS
ALL PRESIDING JUVENILE COURT JUDGES
ALL COUNTY PROBATION OFFICES
ALL PUBLIC AND PRIVATE ADOPTION AGENCIES
ALL DSS ADOPTIONS DISTRICT OFFICES

SUBJECT: INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

The purpose of this letter is to provide users of the Interstate Compact on the Placement of Children (ICPC) with a copy of Guidelines For Termination of Interstate Placements, recently adopted by the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC). These Guidelines were reviewed by a liaison group of the County Welfare Directors Association's Children's Services Committee. In addition, the Department of Social Services takes this opportunity to share and clarify information regarding the operations of the Interstate Placement Bureau (IPB), which processes ICPC documents.

The Guidelines should assist the counties in understanding the appropriate timing and case situations when an ICPC case may be terminated. The Guidelines address the issue of the need for concurrence of the receiving state in order to discharge an interstate placement. The specific area of concern centered around cases in family reunification.

The Guidelines are divided into a Preamble and two major parts. The Preamble is meant to make clear that there is no inconsistency between the requirements of the ICPC and P.L. 96-272 (the Federal Adoption Opportunities and Child Welfare Act of 1989, as amended).

Part I ("In General") is primarily intended to identify those kinds of interstate placement terminations which do not require concurrence of the receiving state.

Part II ("Discharges with Concurrence of Receiving State") deals with those types of terminations which require agreement between the sending agency and the receiving state on when the responsibility and authority of the sending state should end.

An attachment to the Guidelines lists some case examples that deal with returns to "nonoffending parents" which are defined as " . . . parents whose rights have not been limited or terminated . . . ."

A recent change in the IPB operations is the installation of Voice Mail. When a call to the individual IPB consultant is made and the consultant is not available, a message is heard providing time for the caller to leave a message with his/her name and telephone number. This new phone system is intended to enhance work time for the caller as well as the consultant and eliminates time-consuming "telephone tag" calls. Please also note that California's local sending or receiving agency workers will obtain a copy of all ICPC transmittals and pertinent information as soon as IPB staff process these materials. This information should assist workers in reducing the number of telephone calls regarding status checks.

When local county workers have questions related to ICPC processing, they are reminded that each local department of social services has an ICPC liaison who serves to answer questions and clarify procedural concerns. The name and telephone number of the liaison is available from your ICPC consultant.

We take this opportunity to provide you with a copy of a recent California appellate court opinion regarding the ICPC. In In Re Eli F., 212 Cal.App.3d 228 (1989), the Third District Court of Appeal held that the juvenile court's order placing a child outside of California violated the Compact and that the placement order must be reversed. The IPB staff urges careful reading of this decision and dissemination to interested parties.

In closing, we thank local sending agencies for submitting full and complete ICPC referral packets. The inclusion of information regarding the minor's eligibility for Title IV-E coverage and an acceptable financial and medical plan has facilitated the processing of requests through the IPB. The IPB does not process any request from a California sending agency or from another Compact administration office without a complete and acceptable financial and medical plan. I commend the sending agencies on their efforts on behalf of California's children. Your continued cooperation is appreciated and speeds the processing of interstate placement requests.

We also thank those individuals who attended the recent ICPC training sessions. IPB has a videotape of the training which is available on a loan basis. In addition, ICPC training packets were sent to all county welfare training personnel and to ICPC liaisons. Interested personnel may secure a copy of the training packet from their county OCPC liaison.

Should you have any questions regarding these topics or others related to the ICPC, please contact your ICPC consultant at (916) 323-2923 or ATSS 473-2923.

LOREN D. SUTER
Deputy Director
Adult and Family Services

Attachment

cc: County Welfare Directors Association

GUIDELINES FOR TERMINATION OF INTERSTATE PLACEMENTS

PREAMBLE

The Interstate Compact on the Placement of Children (ICPC) is not to be construed as inconsistent with P.L. 96-272, the Adoption Assistance and Child Welfare Act of 1980. The ICPC is the means embodied in state laws for assuring children crossing state lines the procedural safeguards necessary for children served by P.L. 96-272.

The standards for the making of case decisions relating to termination of placements pursuant to the ICPC are intended to be those which constitute good administrative, social work and legal practice in the states.

It is not the purpose of the ICPC to create barriers, such as residency requirements, to the receipt of services when such services are necessary for the protection of children and for the achievement of permanent plans for children in care.

1. In General

1.01. The purpose of an interstate placement pursuant to the Interstate Compact on the Placement of Children (ICPC) is to provide protection, care and nurture for the child in a home or institutional environment (whichever is suited to the circumstances) until a longer lasting status is established. The successor status may be achieved by family reunification, adoption, reaching of the age of majority, emancipation or, in the case of institutionalization, the conclusion of a program of treatment or rehabilitation and return of the child to the sending agency for such further disposition as it may determine to be appropriate pursuant to the Compact or otherwise in accordance with law. In any of the foregoing categories of cases, the termination of the placement occurs by operation of fact or law and usually does not involve a conscious decision on the part of the sending agency or the receiving state to terminate the placement, although it may involve specific clinical decisions (as in the case of treatment or rehabilitation) as to the condition and prognosis for the child.

1.02. As used in these Guidelines and with reference to placements pursuant to ICPC, the word "termination" means the ending of a placement by any act or circumstance which in fact or in law brings the placement status to an end. "Discharge" (a particular kind of termination) is defined in Section 2.02.

1.03. In the categories of cases referred to in Section 1.01, the function of the receiving state is to provide appropriate supervision and to make reports on the conditions and circumstances of the placement and upon progress. The receiving state may make recommendations with respect to termination, but the decision is with the sending agency. Nevertheless, it should be recognized that the receiving state is in the best position to observe placement conditions. When the receiving state (based on such observations reported to the sending agency) recommends that the sending agency return the child, it should do so, unless it has compelling reasons to pursue a different course. It is not a sufficient reason for the receiving state to recommend return of the child merely because dealing with the child is difficult.

1.04. If, during the continuance of the placement, the sending agency decides to seek or make another placement of the child in the receiving state or into a third Compact state, it must employ the procedures of ICPC; including the sending of a new Notice of Intention to Place (ICPC Form 100A), the following of all requirements of Article III (a), (b) and (c) and the placement of the child only if a favorable response to the 100A is received by the sending agency as required by Article III (d).

2. Discharges With Concurrence of Receiving State

2.01. A decision of the sending agency to terminate a placement by returning the child to the sending agency does not require the concurrence of the receiving state, although the receiving state may make recommendations with respect thereto and will normally do so if its supervision experience with the case so warrants.

2.02. When a placement is terminated (other than by family reunification, adoption, reaching of the age of majority, or emancipation), the termination must be only with the concurrence of the Compact Administrator of the receiving state. Such a termination is a discharge of the placement as provided in Article V (a). Any termination which constitutes a "discharge" of the placement should not be initiated or carried out without full consultation and agreement thereon by the sending agency and the Compact Administrator of the receiving state.

2.03. As used in these Guidelines, the term "family reunification" means resumption of full legal custody by the parent(s) of the child and the restoration of the full parent-child relationship, without retention by a court, agency or other entity of any jurisdiction or right of supervision or control.

2.04. Family reunification which is accomplished by agency action or court order restoring parental rights, terminating

supervision or dismissing or vacating court or agency jurisdiction constitutes a discharge within the meaning of Article V (a) of ICPC. Accordingly, termination of the type described in this paragraph (b) requires the concurrence of the receiving state compact administrator.

2.05. Discharge of a placement made pursuant to ICPC may be initiated by the sending agency, or by a court which has jurisdiction over the child and his or her legal custodian (whether or not the court is the sending agency). The discharge should receive the concurrence of the Compact Administrator of the receiving state whenever the circumstances are as described in one or more of the following paragraphs:

(a) When the placement is with a relative of a category enumerated in Article VIII of ICPC and the case history (including information from supervision) supports a reasonable conclusion that the child will continue to be supported and properly cared for by the relative and/or by public aid for which eligibility is based on residence in the receiving state.

If the relative is a biological or adoptive parent of the child, the presumption should be against discharging the placement unless the successor status is to be family reunification. A relative (other than a parent) does not have a legal obligation to support and care for a child and so can not reasonably be expected to continue performing the child rearing responsibilities without adopting the child. In the case of a parent, one would expect something less than family reunification to signify some impairment or absence of ability or willingness to provide for the child's needs without supervision. Consequently, justification of a placement discharge should require a preponderance of evidence of special circumstances which make such an action reasonable and prudent.

(b) (1) When the child has no family ties in the sending agency's state or in the state from which the placement was originated; and (2) the placement is working well, without any financial assistance from the sending agency or any public agency of the sending agency's state or the state from which the placement originated. It is a prerequisite for concurrence in a discharge of a placement that the person or entity who will continue to have responsibility for the child have or receive sufficient legal custody to perform all necessary and appropriate functions that have been the responsibility of the sending agency with respect to the child.

(c) When, for any reason, the Compact Administrator of the receiving state finds that the welfare of the child would be furthered or would not be adversely affected by a discharge and that it is appropriate for the receiving state to assume such governmental responsibility as may attach in the particular case.

(d) However, in the case of a preadoptive placement, the sending agency should not be relieved of responsibility by a termination or discharge of the placement until the adoption is consummated, unless the Compact Administrator of the receiving state concurs for reasons covered by Paragraph (c) hereof.

2.06. The receiving state Compact Administrator should act on a request for discharge of a placement with reasonable promptness. Whenever the request for discharge is denied, the receiving state Compact Administrator should so inform the sending agency, and the requesting court (where applicable) in writing of the denial and the reasons therefor. It is not an acceptable reason for denying concurrence that the termination of the placement status could at some time in the future result in the receiving state or a local public agency therein becoming responsible for the care or support of the child.

ATTACHMENT

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I. Returns to Nonoffending Parents

As explained at the Association's Annual Meeting, parents whose rights have not been limited or terminated (nonoffending parents) do not receive placements within the meaning of the Compact (ICPC) when their children are returned to them. However, the phrase "nonoffending parent" could give rise to some misunderstanding. It also could be thought to include parents who have lost custody of their children because of inability to care for them, even though they have not committed any "offense". So that we can be clear on the types of cases involved, it is desirable to provide some examples.

1. Parents receive a divorce. Neither of them is found unfit or unsuitable as a parent, but for one or another of several possible reasons, only one parent is given custody of the children. The noncustodial parent may be described as "nonoffending". If the court later determines to give custody to this nonoffending parent, the proceeding does not involve a "placement" within the meaning of ICPC. However, if the child has been placed in foster care, or if the parent's rights have been limited in any way other than solely the conferring of custody by the divorce decree, the transfer of custody to the parents would be a placement and would require the use of the ICPC. If a considerable time has passed since the nonoffending parent has had or shared custody, a further question would be whether he or she has kept in communication with the child and shown sufficient evidence of maintaining a continuing interest in the child.

2. A parent entrusts a child to a relative or friend for a trip. The child is left in a Los Angeles bus station and picked up by the police. Los Angeles County provides temporary shelter and care until the circumstances can be deciphered and arrangements made for the child's return. Return of the child to the parent in another state is not a placement and does not involve ICPC. If, however, there are facts which show that the chain of events involve an actual abandonment by the parent of the child, then a return should be on a trial basis and would involve the ICPC.

3. A single parent becomes mentally ill, physically disabled or otherwise unable to care for and protect a child. The child is placed in foster care in State A (with or without a court finding of dependency). Subsequently, that parent who is now in State B is claimed to have recovered or now to be able to resume full parental responsibilities.

If the state or local agency in State A which has the child in foster care seeks to return the child to the parent in State B it will usually make a placement under the Compact in order to provide a trial of the parent's actual ability to resume the full rights of parenthood. However, if the parent commences a proceeding in State A so as to obtain the return of the child, the court may or may not be required to use the Compact. If the Court proposes to return the child for the trial period to determine the parent's actual fitness and retains jurisdiction, it must use the ICPC. On the other hand, if the Court finds that it has sufficient evidence before it and determines the parent to be fit it can remove the child from the agency's jurisdiction, return it to the parent and dismiss its own jurisdiction. In the later event the return is not a placement under the Compact.

4. A father, mother and their child are residents of State A. The mother is indicted or convicted in State B of a crime. The father goes to State B in order to be near the mother and leaves the child in State A where it is placed in foster care. After a time, the father requests that he have the child in his home in State B.

Since the situation is one in which State A has performed care and protective services, the return of the child to the father is a placement and must be made under ICPC. There is need to determine whether the situation (including but not limited to the home environment) is one which makes return appropriate. The required method for doing that is the ICPC procedure.

Some states enter into "voluntary placement agreements" with parent in situations similar to the foregoing. If a voluntary placement agreement were entered into specifying the conditions on which the parent could demand return of the child, and if the parent has performed all of the conditions, return of the child would not be a placement under the ICPC. In such cases, there can also be a question as to whether the father has shown sufficient and continuous interest in the child druing the non-custodial period or whether a failure to do so is evidence of abandonment. In that event, restoration would require use of the Compact.

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

In re ELI F., a Person Coming Under the Juvenile Court Law.	C004186
DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. DEBBIE F., Defendant and Appellant.	(Super. Ct. No. J15474)

APPEAL from a judgment of the Superior Court of Butte County, Juvenile Division, Steven McNelis, Judge. Reversed and remanded.

Jesse S. Kaplan, under appointment by the Court of Appeal, for Defendant and Appellant.

Susan Roff, County Counsel, and David M. McClain, Chief Deputy County Counsel, for Plaintiff and Respondent.

In this case we consider the appealability of certain orders made by the juvenile court following a permanency planning hearing (Welf. & Inst. Code, § 366.25; further unspecified statutory references are to this code)--an issue partially resolved by recent legislation. We shall conclude

most of this appeal must be dismissed, but an order placing the minor in Alabama is reviewable and must be reversed because the juvenile court failed to comply with the Interstate Compact on the Placement of Children (Compact) (Civ. Code, § 264 et seq.).

FACTUAL AND PROCEDURAL HISTORY

The minor was declared a dependent by the court after his mother (appellant) admitted allegations in a petition filed in August 1986. (§ 300, subd. (a).) The minor was originally detained when appellant was arrested for shoplifting while apparently under the influence of drugs. Subsequently, the police found a syringe and a lipstick container containing metharphetamine in appellant's purse.

By January 1987 appellant had participated in a reunification plan and had made sufficient progress to warrant the minor's placement in the Family Maintenance Program. The minor was ordered into the Family Maintenance Program in February 1987.

A supplemental petition filed in April 1987 stated appellant was found to have extensive needle marks and bruising to her arms which were caused by injecting herself with methamphetamines and heroin. She admitted she was a regular user of cocaine. After appellant admitted the allegations in this petition (§ 300, subds. (a), (d)), the minor was placed in the custody of his maternal grandparents.

In a supplemental petition filed in July 1987 the maternal grandparents stated they were no longer able to

provide for the minor's care, custody and control because they could not protect the minor from appellant. On at least one occasion appellant had made verbal threats to kill herself and the minor. In light of the threats, the minor was moved to a confidential foster home.

Appellant was arrested on numerous occasions after January 1987. These arrests include: forgery, burglary, harboring a fugitive, possession of illegal weapons, possession of illegal syringes, and petty theft. In July 1987 appellant was incarcerated and remained so at the time of the permanency planning hearing at issue here.

A contested Permanency Planning Hearing (§ 366.25) was held on March 2, 1988. At the conclusion of this hearing, as pertinent here, the court found there is not a substantial probability the minor will be returned to the custody of his parent within six months and the minor is adoptable. The court also made an order which incorporated by reference recommendation number seven of the social worker's report. That recommendation appears on a standard Butte County form which is materially the same as the form used by the juvenile court clerk for entering the juvenile court's minute order. The form provides: "7. The minor be ordered into the Permanency Planning Program:

"(X) 366.25(d)(1): Adoption

"( ) 366.25(d)(2): Guardianship

"( ) 366.25(d)(3): Long-Term Foster Care"

The juvenile court also ordered the child placed in the custody of the maternal aunt in Alabama.

In her appeal from these orders, appellant contends the juvenile court erred by (1) premising its adoption-referral order on the duration of the dependency; (2) choosing adoption, rather than long-term foster care or guardianship, without substantial evidence; (3) finding without substantial evidence that reunification was unlikely; (4) failing to articulate on the record the standard of proof used to enter the adoption-referral order; and (5) placing the child with his maternal aunt in Alabama pending adoption.

We shall conclude the first four contentions attack a nonappealable order and are nonreviewable but the fifth contention is meritorious.

DISCUSSION

I

Appellant May Not Attack the Adoption-Referral Order In This Appeal

The right to appeal is conferred, if at all, only by statute. (People v. Keener (1961) 55 Cal.2d 714, 720; In re Richard C. (1979) 89 Cal.App.3d 477, 482; In re Corey (1964) 230 Cal.App.2d 813, 820; 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 2, p. 33.)

Section 395 states the general rule governing appeals from section 300 proceedings. (See In re Corey, supra, 230 Cal.App.2d at p. 821; In re Syson (1960) 184 Cal.App.2d 111,

114-115; Moch v. Superior Court (1919) 39 Cal.App. 471, 478.) That statute provides in part, "A judgment in a proceeding under Section 300 may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment; . . ."[1] California Rules of Court, rule 1396(b) also provides in part: "In proceedings under section 300, the petitioner, minor, and the parent or guardian may appeal from any judgment, order, or decree specified in section 395." (Further rule references are to the California Rules of Court.)

In a case brought under section 300, the juvenile court's dispositional order is a judgment. (§ 360; see In re Conley (1966) 244 Cal.App.2d 755, 760 [decided under former § 725].)

As a general rule, section 395 reflects a legislative intent to make appealable any order of a juvenile court after judgment which affects the substantial rights of the minor.

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1 Section 800 provides for appeals from delinquency proceedings, and provides in part: "A judgment in a proceeding under Section 601 or 602, or the denial of a motion made pursuant to Section 262, may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment."

Originally there was only one statute controlling appeals from juvenile court orders, which provided in part: "Every judgment or decree of a juvenile court assuming jurisdiction and declaring any person to be a ward of the juvenile court or a person free from the custody and control of his parents may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment. . . ." (Stats. 1915, ch. 631, § 23, p. 1248.) This statute was later recodified as section 580. (Stats. 1937, ch. 369, § 580, pp. 1022-1023.)

(See In re Corey, supra, 230 Cal.App.2d at p. 822 [decided under former § 800].)

Permanency planning hearings are mandated by section 366.25. Subdivision (a) of that statute requires the juvenile court to conduct one or more hearings, within time deadlines, "to make a determination regarding the future status of the minor" where the court has previously entered a dispositional order removing the minor from the physical custody of parents and the minor cannot be returned home.

If at a permanency planning hearing the juvenile court determines the minor cannot be returned to the custody of parents or guardian, and there is not a substantial probability the minor will be returned within six months, then subdivision (d) of section 366.25, set out in the margin,[2] commands the juvenile court to make certain findings and orders.

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2 Section 366.25, subdivision (d) provides in relevant part: "If the court determines that the minor cannot be returned to the physical custody of his or her parent or guardian and that there is not a substantial probability that the minor will be returned within six months, the court shall develop a permanent plan for the minor. In order to enable the minor to obtain a permanent home the court shall make the following determinations and orders:

"(1) If the court finds that it is likely that the minor can or will be adopted, the court shall authorize the appropriate county or state agency to proceed to free the minor from the custody and control of his or her parents or guardians pursuant to Section 232 of the Civil Code unless the court finds that any of the following conditions exist:

"(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing this relationship.

Footnote 2 continued on next page.

Even though permanency planning orders are entered after judgment, during the past several years a large body of case law disputed whether permanency planning orders were or were not appealable. Some cases held the orders appealable. (In re Linda P. (1987) 195 Cal.App.3d 99; In re Sarah F. (1987) 191 Cal.App.3d 398; In re Lorenzo T. (1987) 190 Cal.App.3d 888; In re Joshua S. (1986) 186 Cal.App.3d 147.) Others held the orders nonappeable. (In re Debra M. (1987) 189 Cal.App.3d 1032; In re Lisa M. (1986) 177 Cal.App.3d 915; In re Candy S. (1985) 176 Cal.App.3d 329; see In re Sarah F., supra, 191 Cal.App.3d at p. 405 (dis. opn. of Benson, J.).) Some of these cases opined that only an order authorizing the filing of a Civil Code section 232 action to terminate parental rights was nonappealable. (In re Candy S., supra, 176 Cal.App.3d 329 [affirming other orders discussed in the unpublished portion of the case rather than dismissing the appeal]; In re Sarah F., supra, 191 Cal.App.3d at p. 411 (dis. opn. of Benson, J.).)

Footnote 2 continued:

"(B) A minor 10 years of age or older objects to termination of parental rights.

"(C) The minor's foster parents, including relative caretakers, are unable to adopt the minor because of exceptional circumstances which do not include an unwillingness to accept legal responsibility for the minor, but are willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her foster parents would be seriously detrimental to the emotional well-being of the minor."

This subdivision previously required the court to "order the county counsel, or if there is no county counsel, the district attorney" to initiate an action to terminate parental rights. (Stats. 1984, ch. 1608, § 6, p. 5682.)

Last year, in an apparent attempt to clarify the issue, the Legislature added subdivision (j) to section 366.25 (eff. Jan. 1, 1989), which provides: "An order by the court that authorizes the filing of a petition to terminate parental rights pursuant to Section 232 or that authorizes the initiation of guardianship proceedings is not an appealable order but may be the subject of review by extraordinary writ." (Stats. 1988, ch. 1075, § 6.)

In In re T.M. (1988) 206 Cal.App.3d 314, Division Five of the First District Court of Appeal interpreted the legislation as evincing an intent to abort even existing appeals from the proscribed orders. (P. 316.) The Supreme Court denied review in T.M. on February 16, 1989, and on February 23, 1989, dismissed several cases raising this point. (Rule 29.4(c); see 9 Witkin, Cal. Procedure, op. cit. supra, Appeal, § 722, pp. 695-696.)[3] While the denial of review by the Supreme Court does not normally add weight to the opinion of the District Court of Appeal "it does not follow that such a denial is without significance . . . ." (DiGenova v. State

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3 All of the cases found the order nonappealable or found the appeal mooted by a subsequent Civil Code section 232 proceeding. (In re Christopher C. [formerly at 201 Cal.App.3d 1386] [1st Dist., Div. 1--nonappealable]; In re Jenny C., S006392 [2d Dist., Div. 1--nonappealable]; In re Alexis C., S006236 [4th Dist., Div. 1--moot]; In re Erik R., S003804 [4th Dist., Div. 2--nonappealable]; In re Keith W., S005348 [4th Dist., Div. 2--nonappealable]; In re Sharon W. [formerly at 200 Cal.App.3d 869] [4th Dist., Div. 3--nonappealable]; In re Julia C. [formerly at 196 Cal.App.3d 840] [6th Dist.--appealable, but moot].)

Board of Education (1962) 57 Cal.2d 167, 178; see 9 Witkin, Cal. Procedure, op. cit. supra, Appeal, §§ 775-776, pp. 743-747.) Given the wholesale disposition of these cases in the face of an appellate interpretation of the new statute, we believe the Supreme Court has made its unspoken views clear. Section 366.25, subdivision (j) resolves the split of authority among the district courts of appeal and terminates existing appeals from the orders described in the statute. (In re T.M., supra, 206 Cal.App.3d at p. 316.)

However, this conclusion does not end the question before this court. As is apparent in this case, a juvenile court frequently makes several kinds of orders at the conclusion of a permanency planning hearing. Had the Legislature wished to make all such orders nonappealable it would have said so. Moreover, the original bill which added subdivision (j) to section 366.25 (Sen. Bill No. 1860) was amended on April 4, 1988, to make all "Orders determining a permanent plan" nonappealable. (Sen. Amend. to Sen. Bill No. 1860 (1987-1988 Reg. Sess.) Apr. 4, 1988.) However, a legislative committee staff analysis[4] noted: "The phrase 'orders determining a permanent plan' is not clear as to which orders at the permanency planning hearing are not appealable. [¶] In an order at a permanency planning hearing, the court

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4 The Supreme Court recently endorsed the value of such legislative materials. (Hutnick v. United States Fidelity & Guaranty Co. (1988) 47 Cal.3d 456, 465, fn. 7.)

may order long-term foster care for the minor child, order or deny visitation to the parents or guardian, or impose a guardianship and issue letters of guardianship. These are final orders from which an appeal is appropriate. Should not the court orders which are not to be appealable be limited to those orders which require the filing of a petition to terminate parental rights or to establish a guardianship?" (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 1860 (1987-1988 Reg. Sess.) as amended on June 16, 1988.) On June 29, 1988, the bill was amended to prohibit appeals from "an order authorizing the termination of parental rights or the initiation of guardianship proceedings." (Assem. Amend. to Sen. Bill No. 1860 (1987-1988 Reg. Sess.) June 29, 1988.) On August 26, 1988, the language was changed to its present form. (Assem. Amend. to Sen. Bill No. 1860 (1987-1988 Reg. Sess.) Aug. 26, 1988.)

Thus we conclude that by its enactment of subdivision (j) of section 366.25 the Legislature intended to preclude appeals only from an order authorizing the filing of a parental termination action or initiating a guardianship proceeding. Other contemporaneous orders made during a permanency planning hearing remain appealable pursuant to the general rule of section 395 and rule 1396(b).

We must determine which portions of this appeal, if any, are made nonappealable by subdivision (j) of section 366.25. As noted, the juvenile court used a standard Butte

County form to designate a permanent plan of adoption. Though the court did not make a separate, explicit, order authorizing the filing of a Civil Code section 232 petition, it made the predicate findings for such an order and cited subdivision (d)(1) of section 366.25 which makes the issuance of such an order mandatory upon the juvenile court. (See fn. 2, ante.) In addition, rule 1379(c)(3) provides in part, "At a permanency planning hearing, . . . the court shall consider only whether to order the institution of termination proceedings, the establishment of a legal guardianship, or long-term foster care." The parties treat the adoption referral order as embracing an authorization to file a parental termination action, and we interpret the order as they do, since the law disregards trifles (Civ. Code, § 3533) and respects form less than substance. (Civ. Code, § 3528.)[5].

In her brief, appellant does not expressly identify the order(s) she seeks vacated should her contentions of error succeed, except that she clearly challenges the order placing the child in Alabama. We must therefore examine each of appellant's challenges to determine which order in fact is being attacked.

Appellant's first challenge is to the trial court's determination it was required to impose a permanent plan of

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[5] However, Butte County would be well advised to trifle with its forms and conform them to the applicable statutes.

adoption due to the duration of the dependency. Her second challenge is to the sufficiency of the evidence used to select adoption, as opposed to long-term foster care or guardianship, as the permanent plan. Appellant also challenges the court's finding reunification was not likely within the next six months and contends the court failed to articulate the standard of proof it used at the hearing. These contentions are designed to overturn the court's order "that authorizes the filing of a petition to terminate parental rights," and are not cognizable on appeal. (§ 366.25, subd. (j); In re T.M., supra, 206 Cal.App.3d at p. 315.)[6]

II

The Juvenile Court Erroneously Placed the Minor In Alabama

Appellant also contends there is insufficient evidence to support the court's order placing the child with his aunt in Alabama.[7] This order does not authorize the filing of a petition to terminate parental rights; rather, the Alabama placement order addresses the temporary placement of the minor and concerns matters wholly separate from the order authorizing

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6 Assuming for purposes of argument we have the discretion to treat the appeal as a petition for an extraordinary writ, we decline to do so in this case.

7 The court granted "discretion to CPS to place the minor with the maternal aunt, Lisa M[]." The written order states "placement at the discretion of the aunt." The parties do not dispute the order effectively placed the minor in Alabama.

exception. The previously discussed legislative history of subdivision (j) of section 366.25 suggests the Alabama placement order is precisely the kind of order that should remain appealable. We conclude the placement order is appealable (§ 395; rule 1396(b)) and turn to the merits.

We requested supplemental briefing to consider the effect of the Compact. (Civ. Code, § 264 et seq.; Ala. Code, § 44-2-20.)

California and Alabama are each signatories to the Compact. (Ibid.) The various articles comprising the Compact are set out in Civil Code section 265.[8] Article 1 of the Compact states in relevant part: "It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

"(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

"(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

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8 The provisions of the Compact are clarified and supplemented by Civil Code sections 266-274.

"(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis on which to evaluate a projected placement before it is made."

The juvenile court is a "sending agency" under the Compact. (Compact, art. 2, subd. (b); 61 Ops.Cal.Atty.Gen. 525, 527 (1978).) Article 3 of the Compact provides in part, "(a) No sending agency shall send, . . . any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

"(b) Prior to sending, . . . the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, . . .

". . . . . .

"(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child."

Following the placement of a child under the Compact, the sending agency retains jurisdiction "sufficient to determine all matters in relation to the custody, supervision,

care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, . . ." (Compact, art. 5, subd. (a).)

The social worker in this case contacted the authorities in Alabama to obtain information regarding the suitability of the home of the minor's aunt. The report submitted to the juvenile court stated "Unfortunately Interstate Compact for the Placement of Children (ICPC) is a cumbersome process and there has been no communication as yet from Alabama regarding this matter." At the permanency planning hearing, counsel for Child Protective Services stated, "I think there has been interstate compact approval for the home in Alabama." No other information respecting Compact compliance--whether in oral or written form--was before the juvenile court.

The juvenile court thus had no information before it regarding the stability, safety, or even existence of the home in Alabama to which it sent the minor.[9] Here the court received no written notice from Alabama as required by article 3, subdivision (d) of the Compact and had no information about

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[9] County attached to its supplemental brief a purported copy of the request sent to Alabama. It suggests Alabama authorities gave verbal permission for the child to be sent to Alabama. This document is not in the record on appeal, was not before the juvenile court, and provides no information about the condition of the home in Alabama.

the home sufficient to supervise the care of the child as contemplated by article 5.

"The sending, . . . into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children . . . ." (Compact, art. 4.) While the Compact prescribes no particular remedy for the violation of its terms, and does not explicitly state the placement of a child in contravention of the terms of the Compact is remediable, we believe the violation of the Compact in this case requires reversal of the juvenile court's placement order.

The juvenile court was required to be knowledgeable about the placement of the minor with his aunt, a relative. "In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. In determining whether such placement is appropriate, the probation officer and court shall consider the ability of the relative to provide a secure and stable environment for the child. Factors to be considered in that assessment include, but are not limited to, the good moral character of the relative; the ability of the relative to exercise proper and effective care and control of the child; the ability of the relative to provide a home and the

necessities of life for the child; which relative is most likely to protect the child from his or her parents; which relative is most likely to facilitate visitation with the child's other relatives and to facilitate reunification efforts with the parents; and the best interests of the child." (§ 361.3, subd. (a), emphasis added.) This statute requires the juvenile court to be knowledgeable about a minor's placement regardless of whether the placement is within or without the State of California. Where placement is outside this state, at a minimum the statute envisions compliance with the Compact.

Moreover, the suitability of the placement must be reflected in the record of the proceedings before the juvenile court, so that placement may be contested if warranted and so that the juvenile court's decision may be subject to meaningful appellate review. (See, e.g., In re Cheryl H. (1984) 153 Cal.App.3d 1098, 1133; In re Jamie M. (1982) 134 Cal.App.3d 530, 535-536.)

Here the record fails to disclose any information about the aunt herself, her home, or her ability to provide care for the minor. Since the juvenile court's placement order violated both the Compact and section 361.3, subdivision (a), the order must be reversed.

DISPOSITION

The order placing the minor with the maternal aunt is reversed and the case is remanded to the juvenile court to

reconsider the placement of the minor. In all other respects the appeal is dismissed. (CERTIFIED FOR PUBLICATION.)

SIMS, J.

We concur:

PUGLIA, P.J.

SCOTLAND, J.